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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

COVARSIA L. DILL,

Defendant and Appellant.

2d Crim. No. B207286
(Super. Ct. No. MA031369)
(Los Angeles County)

Covarsia L. Dill appeals from the judgment entered after a jury convicted him of attempted willful, deliberate and premeditated murder (count 1; Pen. Code, §§ 664/187, subd. (a); 664, subd. (a))¹, assault with a firearm (count 2; § 245, subd. (a)(2)), home invasion robbery (count 3; § 211), first degree burglary (count 4; § 459), and attempted first degree residential robbery (count 5; §§ 664/211). The jury found that the offenses were committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)), that appellant had suffered a prior strike conviction within the meaning of the Three Strikes law (§§ 667, subds. (b) - (i); 1170.12, subds. (a) - (d)) and a prior serious felony conviction (§ 667, subd. (a)(1), and that appellant had served a prior prison term

¹ All statutory references are to the Penal Code.

(§ 667.5, subd. (b)). The jury further found that, in committing counts 1, 3, 4, and 5, appellant personally and intentionally used and discharged a handgun which caused great bodily harm or death (§ 12022.53, subds. (b) - (d)).

The trial court sentenced appellant to 107 years 4 months to life in state prison based on the following sentence calculation:

On count 1 for attempted premeditated murder, the trial court imposed a life sentence plus enhancements of 36 years to life (i.e., a 25-year-to-life enhancement for use of a firearm (§ 12022.53, subd. (d)), a 5-year gang enhancement (§ 186.22, subd. (b)(1)(B)), 5 years for the prior serious felony conviction (§ 667, subd. (a)(1)), plus 1 year on the prior prison term enhancement (§ 667.5, subd. (b)).

On count 3 for home invasion robbery, the trial court imposed a consecutive sentence of 42 years to life consisting of a 6-year upper term, doubled based on the prior strike conviction, plus enhancements of 30 years to life (i.e., a 25-year-to-life enhancement for use of a firearm (§ 12022.53, subd. (d)), plus a 5-year gang enhancement (§ 186.22, subd. (b)(1)(B)).

On count 4 for first degree burglary, the trial court imposed a sentence of 29 years 4 months to life based on one-third the midterm (16 months), doubled based on the strike prior conviction, plus enhancements of 26 years 8 months to life (i.e., a 25-year-to-life enhancement for use of a firearm (§ 12022.53, subd. (d)), plus 20 months (one-third of 5 years) on the gang enhancement; § 186.22, subd. (b)(1)(B)). .

On count 2 (assault with a firearm; aggregate sentence of 5 years) and **count 5** (attempted first degree residential burglary; aggregate sentence of 28 years to life), concurrent sentences were imposed and stayed pursuant to section 654.

Appellant contends, and the Attorney General agrees, that the 5-year gang enhancement on the count 1 conviction for attempted premeditated murder should be stricken. (See *People v. Lopez* (2005) 34 Cal.4th 1002, 1007.) We modify the judgment to reflect this change in the sentence and to reflect that appellant's minimum parole eligibility date is set at 30 years. (§ 186.22, subd. (b)(5); *People v. Jefferson* (1999) 21

Cal.4th 86, 100-101 [prior strike conviction requires that 15 year minimum parole eligibility date be doubled].) The judgment, as modified is affirmed.

Facts

On March 3, 2005, appellant went to Faebra Blaine's house in Lancaster and demanded to see Gene Allen. Allen was Blaine's boyfriend. Blaine said that he was not there but would be back. After Blaine shut the door, appellant entered through a bedroom window.

Appellant pushed Blaine down, pointed a handgun at her head and demanded money. Appellant's male companion, who was armed with a semiautomatic handgun, recognized Blaine and said "Taco, let's go."

Seconds later, Allen ran into the bedroom. Appellant threatened to kill him and demanded money. Allen handed over what was in his pocket and was shot in the leg. Blaine called 911 as appellant shot Allen in the leg and the neck.

Evidence was received that appellant was a member of the Hoover Criminals and known as "Taco." A gang expert testified that the Hoover Criminals is an organized street gang that commits robberies, assaults, and murders, and that appellant committed the offenses to benefit the gang.

Count 1: Five Year Gang Enhancement

On count 1 for attempted premeditated murder, appellant was sentenced to life with parole plus 36 years to life in enhancements, which included a 5-year gang enhancement (§ 186.22, subd. (b)(1)(B)). Section 186.22 subdivision (b)(5) provides: "[A]ny person who violates the [gang enhancement statute] in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served." In *People v. Lopez, supra*, 34 Cal.4th 1002, our Supreme Court concluded that "the Legislature intended section 186.22, subdivision (b)(5) to encompass both a straight life term as well as a term expressed as years to life [Citation.]" (*Id.*, at p. 1007.)

Because appellant was convicted of attempted premeditated murder and sentenced to life with parole, the proper remedy is to strike the 5-year gang enhancement.

(*Id.*, at p. 1011.) "[T]he language of section 186.22 is clear: determinate enhancements are to be imposed only when a determinate term is imposed. The 15-year parole minimum is to be imposed when the defendant has been sentenced to a life term." (*People v. Harper* (2003) 109 Cal.App.4th 520, 527 [10-year gang enhancement stricken and abstract of judgment modified to reflect 15-year minimum parole eligibility date]; see also *People v. Johnson* (2003) 109 Cal.App.4th 1230, 1239 [10 year gang enhancement stricken where underlying offense for second degree murder carried a life term].)

Accordingly, we modify the judgment to strike the 5-year gang enhancement which was imposed on count 1 for attempted premeditated murder. The judgment is further modified to provide that, pursuant to section 186.22, subdivision (b)(5), appellant shall not be eligible for parole until he has served a minimum of 30 years in prison. The trial court shall amend the abstract of judgment to reflect these changes and forward a certified copy of the amended abstract of judgment to the Department of Corrections.

In all other respects, the judgment is affirmed.

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YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Carol Koppel, Judge
Superior Court County of Los Angeles

Alan Stern, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, Viet H. Nguyen, Deputy Attorney General, for Plaintiff and Respondent.